

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**ANTHONY K. LOGSDON**

Claimant

VS.

**PRAIRIE ROSE CHUCKWAGON**

Respondent

AND

**KANSAS EMPLOYERS WORKERS  
COMPENSATION FUND**

Insurance Fund

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Docket No. 1,018,691

**ORDER**

Respondent and its insurance fund (respondent) appealed the December 13, 2004 preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

**ISSUES**

Claimant alleges he injured both hands, wrists, and shoulders working for respondent "[e]ach working day up to and including 8/14/04."<sup>1</sup> In the December 13, 2004 preliminary hearing Order, Judge Barnes agreed and, consequently, granted claimant's request for workers compensation benefits.

Respondent contends Judge Barnes erred. Respondent first argues claimant failed to prove his bilateral upper extremity injuries resulted from an accident that arose out of and in the course of his employment with respondent. Instead, respondent argues claimant's present injuries, particularly the left shoulder, stem from a non-work-related accident at home on January 31, 2004, or, in the alternative, from a 1993 accident that occurred during claimant's employment with a different employer.

Respondent also contends claimant failed to prove he provided respondent with appropriate notice of his accidental injury as required by K.S.A. 44-520 as the information claimant provided did not specifically reference two specific events that allegedly occurred

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<sup>1</sup> Application for Hearing (filed Aug. 24, 2004).

on August 13 and 14, 2004. Accordingly, respondent requests the Board to reverse the preliminary hearing Order and release it from liability in this claim.

Conversely, claimant contends the preliminary hearing Order should be affirmed. Claimant admits he previously injured his left shoulder working for another employer. But claimant contends he further injured and aggravated the left shoulder and developed repetitive use injuries in both shoulders, hands, and wrists working for respondent. Moreover, claimant maintains respondent had actual knowledge of his bilateral upper extremity injuries, which rendered formal notice unnecessary. In the alternative, claimant argues respondent had appropriate notice of the bilateral upper extremity injuries as an August 24, 2004 letter from claimant's attorney to respondent referenced an accident involving both shoulders that occurred each workday through August 14, 2004, which would have necessarily included the two specific events of August 13 and 14, 2004, alluded to above.

The issues before the Board on this appeal are:

1. Did claimant prove he injured or aggravated both upper extremities and shoulders working for respondent and, if so, did that injury precipitate the present need for medical treatment?
2. Did respondent either have actual knowledge that claimant injured or aggravated his upper extremities at work or did claimant provide timely notice of his alleged series of accidents that satisfies the requirements of K.S.A. 44-520?

#### **FINDINGS OF FACT**

1. In November 1993, claimant injured his left shoulder working for another employer, Boeing, and later underwent two left shoulder surgeries. Claimant received workers compensation benefits for that injury and eventually settled the resulting workers compensation claim. As part of that settlement, claimant reserved his right to seek additional medical treatment.
2. Respondent operates a cow-calf operation, a museum, and a dinner theater that presents Western shows. In early April 2003, claimant began working for respondent as a ranch foreman, which entailed wait-staff duties and clean-up in the dinner theater, feeding and caring for the livestock, and maintenance of the grounds, buildings, and equipment. Claimant regularly worked seven days a week and sometimes worked 12- to 14-hour days when respondent presented a show.
3. On January 31, 2004, claimant re-injured his left shoulder when he slipped and fell at home. The next day, February 1, 2004, claimant felt severe left shoulder pain

reaching for a truck door. Following those incidents, claimant has consistently experienced pain (which he rated as a 7 out of 10 in intensity) in his left upper extremity and shoulder.<sup>2</sup> Consequently, in the workers compensation claim against Boeing, claimant requested additional medical treatment contending he would not have dislocated his left shoulder “but for” the injury at Boeing.<sup>3</sup>

4. Despite the January 2004 fall and the resulting ongoing left upper extremity symptoms, claimant continued working for respondent. Although he attempted to protect his left upper extremity, many of claimant’s tasks required use of both arms. Claimant testified, in part:

Well, the arm was hurting, shoulder, the arm. It was hurting. But I couldn’t do everything that I had to do with just one arm. So I had to use the arm, the left arm, to do some of the things that I had to do. There’s no way around it.

. . . .

Lifting of those benches, lifting of feeding the cattle. In the wintertime, putting big bales of hay up in the big hay feeders for the cattle. Snow would get on the strings, you cut the strings, you couldn’t get them off, you would have to physically crawl up on top of an eight-foot bale hay feeder just to get up there to the strings to cut them and pull them off. So I would have to lift myself up with both arms. Carrying of bales, carrying of feed sacks, feeding the pellets to the cattle, lifting of the trays, lifting of the trash bags. There was so many things [that required using the left arm], the weed eating.<sup>4</sup>

According to claimant, working exacerbated his left shoulder symptoms.

5. When claimant fell in January 2004, his right shoulder was symptom-free.<sup>5</sup> But as he worked and attempted to protect his left shoulder, he began experiencing symptoms in his right shoulder. In late February or early March 2004, claimant noticed right shoulder pain. Claimant’s right shoulder pain gradually and

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<sup>2</sup> P.H. Trans. at 32.

<sup>3</sup> *Id.* at 18.

<sup>4</sup> *Id.* at 19-20.

<sup>5</sup> *Id.* at 21.

progressively worsened through August 14, 2004, when he last worked for respondent. Likewise, after the January 2004 fall claimant also developed gradually worsening pain in both arms, hands, and wrists through his last day of work for respondent.

Well, now with both arms being bad, it seemed like everything was working its way down and getting to the point where I was unable to lift the arms as much as I needed to, put more strain on my hands. And it got to the point where it had gone from my shoulders down into my arms into my wrists and into my hands and into my fingers until the point of where I could hardly open a door.<sup>6</sup>

6. In early April 2004, claimant filed his request for post-award medical treatment in the Boeing claim. Later that month, at his attorney's request claimant saw Dr. Pedro A. Murati for purposes of the medical claim against Boeing. At that visit, claimant reported left shoulder pain and numbness and tingling in his left fingers. But claimant did not attribute his symptoms to his work for respondent. Dr. Murati's April 2004 medical report reads, in pertinent part:

Patient states on 01-31-04, he was at his residence when he stepped outside to feed his dog and slipped and fell, landing on his right side while his left arm flew into the air, causing pain in his left shoulder. Patient states then on 02-01-04, he reached out of his truck to shut the door and felt his left shoulder dislocate. Patient denies receiving any medical treatment for his newest injury. **PRE-Existing:** Patient is complaining today of left shoulder pain. Patient states he experiences numbness and tingling in his left fingers. Patient states he experiences a popping sensation in his left shoulder and it continue[s] to dislocate. Patient states he is very weary [*sic*] of performing overhead activities. Patient is currently employed for Restoration Ranch as a ranch forearm [*sic*] for approximately 1 year.<sup>7</sup>

Based upon that evaluation, Dr. Murati concluded claimant had either strained or tore his left rotator cuff and that he also had myofascial pain syndrome in both shoulder girdles and the cervical paraspinal muscles. The doctor recommended cortisone injections, an MRI, physical therapy with myofascial pain release techniques, and anti-inflammatory and pain medications. Dr. Murati determined

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<sup>6</sup> *Id.* at 22.

<sup>7</sup> *Id.*, Resp. Ex. 2 at 2.

claimant's condition was directly related to the accidental injury he sustained at Boeing.

Moreover, the only work restriction Dr. Murati recommended in April 2004 was to work as tolerated.

7. In July 2004, at the request of Special Administrative Law Judge Vincent L. Bogart, claimant saw Dr. Philip R. Mills in relation to the Boeing claim for injuries to the left shoulder. When claimant met with Dr. Mills, claimant did not attribute his left upper extremity symptoms to the work he was performing for respondent. Instead, as reflected by his July 21, 2004 letter to Judge Bogart, Dr. Mills was provided the following history and information:

*Injury:* The patient did quite well [following his initial left shoulder treatment] until 01/31/04 when he slipped and fell, landing on his right shoulder. His left arm flew up in the air, sort of as a balancing movement, and he believes he had an anterior dislocation at that time. I quizzed the patient closely and he absolutely denies striking the left shoulder and that the only movement was a quick movement for balancing and that he struck the right shoulder, not the left shoulder. On close questioning, he absolutely and unequivocally denies other source of injury other than this quick balancing movement. The pain was severe and he was nauseated. He felt that it would go away, however, the next day it was painful to do such things as open a door and it was unstable, as it had been before his surgical procedure by Dr. Morris.

. . . .

*Current Status:* At the present time he has pain in the left shoulder. Shoulder movements are limited and it feels to him like it is going in and out of the socket. There is pain radiating into the left arm. The pain is described as feeling like it is on fire and it is very sore. There is numbness and tingling in the left hand and fingers. The pain is increased by raising his arm or putting it out to the side or moving it behind him. It is eased with heat but this gives minimal help. His last physical therapy was in 1995. . . . His pain is reported to be constant. On a scale from 0 (no pain) to 10 (excruciating pain), the examinee reports the pain now is a 7. During the past month the pain averaged 7 to 8, with a high of 10 and a low of 6. He denies other difficulties.

*Functional Status:* The examinee reports the greatest difficulties with the following tasks: Anything requiring use of his arm out to the

side or to the front or extending it. He is not able to lift anything heavy or reach behind his back.<sup>8</sup>

As a result of the July 2004 evaluation, Dr. Mills concluded claimant's unstable left shoulder was directly related to his injury at Boeing as it was a natural and probable consequence. Moreover, the doctor concluded claimant "should be working with one handed activities" and return to Dr. Harry Morris (who performed claimant's second left shoulder surgery) as claimant might need additional surgery.<sup>9</sup>

8. On August 12, 2004, the claim for additional medical treatment from Boeing came before Judge Bogart. At that hearing claimant was not asked and did not attribute his need for medical treatment to the work he performed for respondent. Following that hearing, by Order dated September 27, 2004, Judge Bogart ordered Boeing to pay for treatment of claimant's left shoulder. But that ruling was appealed. Claimant did not request treatment for his right shoulder or right upper extremity in the post-award proceeding.
9. Claimant's last day of working for respondent on August 14, 2004, followed two specific incidents that increased claimant's symptoms. On August 13, claimant experienced intense left shoulder pain when a draft horse he was leading jumped to the side, which pulled on claimant's left arm. And on August 14, claimant helped stack approximately 90 benches, each weighing 60 to 70 pounds, and again experienced intense pain in both shoulders. Before those two incidents, claimant described his bilateral shoulder pain as being 7 or 8 on a 10-point scale. But after those events, claimant described his pain as rising to the maximum level, forcing him to miss two days of work.
10. Claimant was not scheduled to work on Sunday, August 15, 2004. And on August 16 and 17, claimant was unable to work due to his bilateral upper extremity pain. When claimant reported to work on August 18, 2004, he was terminated.

I went in [on August 18] and the boss had me come into the office first thing and told me that he knew I was in so much pain that he was afraid I might get out there on the tractor -- he used the tractor as a -- an idea of what could happen. Said he was afraid that I might pass out, pass out, fall off the tractor and the tractor run over

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<sup>8</sup> *Id.*, Cl. Ex. 2 at 2.

<sup>9</sup> *Id.*, Cl. Ex. 2 at 5.

me. So he was afraid of the pain being so bad that I would get hurt even worse. And so he wanted to terminate me.<sup>10</sup>

Claimant has not worked anywhere since August 14, 2004.

11. Following his termination, claimant saw both Dr. Murati and Dr. Mills again. On October 12, 2004, at claimant's attorney's request, Dr. Murati evaluated claimant for bilateral shoulder and bilateral upper extremity pain. This time claimant told Dr. Murati about the work he performed for respondent such as "herding cattle, harnessing horses, setting up for stage shows and wagon rides and cleaning up afterwards"<sup>11</sup> and carrying heavy bales of hay. Claimant also told Dr. Murati about the August 13, 2004 incident with the draft horse and the pain he experienced in both shoulders and hands on August 14, 2004, while lifting benches. Dr. Murati diagnosed bilateral shoulder pain due to either a strain or tear, and bilateral carpal tunnel syndrome. The doctor also concluded claimant's injuries were directly related to his employment with respondent. According to Dr. Murati's medical report, claimant attributed his right shoulder symptoms to overcompensating for his left shoulder.
12. At claimant's attorney's request, Dr. Mills evaluated claimant on November 16, 2004. Claimant told Dr. Mills he began noting right shoulder pain in either February or March 2004, and attributed the problem to "babying" his left arm and the resulting increased use of his right arm. Claimant also told Dr. Mills about the August 13 incident with the draft horse and about lifting benches the next day. Dr. Mills diagnosed an unstable left shoulder and right shoulder pain. Moreover, the doctor concluded there was a causal relationship between claimant's bilateral shoulder pain and his work for respondent. According to the doctor, claimant's condition had deteriorated since the July 2004 examination. Dr. Mills restricted claimant from reaching, overhead work, and lifting more than 10 pounds. Moreover, the doctor recommended a work-up for the right shoulder and a surgical evaluation for the left shoulder.
13. Claimant did not mention the specific August 13 and 14, 2004 incidents to respondent. But claimant's boss, Mr. Ethridge, knew as early as May 2004 claimant was experiencing bilateral arm and shoulder symptoms, which were exacerbated by his work activities. Claimant testified, in part:

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<sup>10</sup> *Id.* at 24-25.

<sup>11</sup> *Id.*, Cl. Ex. 1 at 1.

Q. (Mr. Winfrey) Mr. Logsdon, was there a time during your employment at Prairie Rose/Restoration that Mr. Ethridge began asking you in the morning on a daily basis about the symptoms that you were having in your arms and shoulders?

A. (Claimant) Yes, he did.

Q. And when did that first occur? Best of your recollection, sir.

A. I would have to say, the best of my recollection would probably be in the vicinity of May.

Q. Of 2004, correct?

A. Yes, sir.

Q. All right, now, tell us very briefly what would happen in those conversations as they took place.

A. I'd show up for work over there at his house where the cattle operation was. And he would come out and getting ready to go to work over at Prairie Rose. We would see each other, talk. He would ask me how I was doing that day, that morning. Sometimes I would joke with him and ask him if he wanted me to tell him the truth or lie to him. And he very seriously would say, tell me the truth. And I would tell him, I'm in pain in my shoulders, arms and hands hurt and that the job hurt, caused pain. But I would keep doing it. He'd say, okay. And then he would start in on things he wanted done that day.

Q. Now, did that conversation occur on almost a daily basis?

A. Pretty close to it. It wasn't every day but there might be one day and then the next day not and the next two or three days in a row it might happen. So it was pretty close to a daily basis.<sup>12</sup>

#### **CONCLUSIONS OF LAW**

The evidence establishes that claimant presently needs medical treatment for both shoulders and upper extremities. The evidence, however, fails to prove within a reasonable degree of medical probability that claimant's present need for medical treatment to the left shoulder resulted from the work he performed for respondent as

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<sup>12</sup> *Id.* at 67-68.



opposed to his January 31, 2004 incident at home. Following the January 2004 incident, claimant experienced significant ongoing pain in his left shoulder. Claimant attempted to protect his left shoulder and altered the manner in which he performed his work duties. As a result of the January 2004 incident, claimant required a surgical evaluation, which was never provided. In light of that evidence, the Board is not persuaded claimant's increased symptoms are due to additional injury from the work he performed for respondent, whether they are the natural consequence of the January 2004 incident at home, or whether they are merely a temporary exacerbation. Accordingly, claimant's request for medical benefits to treat his left shoulder should be denied in this claim.

On the other hand, the evidence establishes that the work claimant performed for respondent has caused symptoms in claimant's right shoulder and both arms. The Board finds claimant's job duties were physical in nature and caused repetitive use injuries to claimant's right shoulder and both arms, hands, and wrists. At this stage of the proceeding, the Board concludes claimant is entitled to receive medical benefits to treat the right shoulder and both arms, hands, and wrists. Accordingly, the December 13, 2004 preliminary hearing Order should be affirmed to that extent.

The Board concludes respondent had knowledge of claimant's ongoing bilateral shoulder and upper extremity symptoms, which claimant related to his work activities. Accordingly, the Board affirms the Judge's finding that respondent had appropriate and timely notice of the alleged repetitive use injuries.

**WHEREFORE**, the Board modifies the December 13, 2004 preliminary hearing Order. Claimant is denied medical treatment in this claim for his left shoulder. But claimant is entitled to receive medical treatment for his right shoulder and both arms, hands, and wrists.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of February 2005.

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BOARD MEMBER

c: Gary A. Winfrey, Attorney for Claimant  
Darin M. Conklin, Attorney for Respondent and its Insurance Fund  
Nelsonna Potts Barnes, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director